THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

-

WRIT APPEAL NO.52 OF 2003

(DATED: 07.02.2006)

Between:

The Chairman & Managing Director, Hindustan

Shipyard Limited, Gandhigram, Visakhapatnam

And another.

…Appellants

A n d

Dr.V.Prabhakaram S/o late Sri V.Suryanarayana

Occ: Deputy Manager (Medical), Hindustan Shipyard

Limited, Visakhapatnam.

..Respondent

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT APPEAL NO.52 OF 2003

JUDGMENT: (Per Hon'ble Sri Justice B.Prakash Rao)

Heard Sri P.Nageswara Sree, learned counsel appearing on behalf of the appellants and Sri M.S.Prasad, learned counsel appearing on behalf of the respondent herein.

The appellants are the management, who filed this appeal aggrieved against the order allowing the writ petition filed at the instance of the respondent herein, who is an employee of the appellants, seeking a writ of *Mandamus* challenging the orders of respondent No.2 confirming the orders of respondent No.1 imposing a punishment of reduction to the post of Medical Officer (E1 Grade) from the post of Deputy General Manager (Medical E3 Grade) as arbitrary and illegal.

Though several contentions have been urged on behalf of the appellants in regard to the findings as arrived at by the learned single Judge on facts, however, during the course of the arguments, it is pointed out that an objection was raised in regard to the competency of the Enquiry Officer to hold such an enquiry contrary to the rules concerned. However, the same was not gone into and the entire matter was considered only on merits and the learned single Judge has allowed the writ petition.

It would be more apt here to take note of the relevant rule, which prescribes the procedure for imposing major penalties by conducting an enquiry, which reads as follows:

Rule -27

> 2. Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or mis-behaviour against an officer, it may itself enquire into, or appoint any public servant/officer (hereinafter called the inquiring authority) to inquire into the truth thereof.

From the above, it is quite amply clear that it is only a Public Servant/Officer who has to be appointed as an Enquiry Officer and none else. Whereas, in the present case, admittedly, the enquiry officer appointed is an Advocate, who conducted the enquiry basing upon which the entire impugned action has been initiated. Having regard to the same, it has to be held that the very appointment of the Enquiry Officer and the entire enquiry conducted by him is wholly unsustainable and is against the mandatory provisions as contemplated under Rule 27(2) of the aforesaid rule. In

view of the same, it is not necessary to go into the merits of the case or any other pleas raised. It would suffice in the interests of justice to allow the writ petition only on the ground that the enquiry officer is incompetent to conduct the enquiry and thus the entire enquiry proceedings initiated by him are liable to be set aside.

The writ petition is accordingly allowed. The impugned order dated 24.01.2002 is set aside and consequently the Writ Appeal is disposed of setting aside the order against the petitioner though totally on a different footing. However, it is left open for the appellants to appoint a fresh enquiry officer as contemplated under the Rules and to conduct enquiry afresh so as to complete the same as expeditiously as possible.

It is needless to mention that having regard to longer lapse of time, the enquiry officer who will be appointed will not be allowed to seek any further evidence from either side as both sides have agreed to restrict themselves and proceed with the case with the evidence and material as available on record only. No further evidence or material will be ushered in from any side. The entire exercise of the Enquiry Officer shall be completed within a period of three months from the date of appointment of the enquiry officer. The appellant shall appoint a competent enquiry officer within six weeks from today. It is needless to mention that any findings or observations made in these proceedings shall not come in the way of considering the matter afresh on merits by the Enquiry Officer independently.

The Writ Appeal is accordingly disposed of. No costs.

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B.PRAKASH RAO, J

7.2.2006

RAR _____

D.APPA RAO, J

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT APPEAL NO.52 OF 2003

(Judgment of the Bench delivered by

Hon'ble Sri Justice B.Prakash Rao)

DATED :07.02.2006

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